SALES—FAILURE OF TITLE.—Defendants sold a mule to plaintiff, with implied warranty of title. At this time there was an outstanding mortgage on the mule, which was unknown to either of the parties. Later the mortgagee foreclosed, the mule being taken from the plaintiff and sold. At that sale the defendants bought the mule and tendered it back to plaintiff with damages for the loss of its services. The plaintiff refused to take the mule and brought suit on the warranty. *Held,* that by the tender of the mule, the defendants had complied with their warranty. *Lee, et al.* v. *Woods,* (1914 Ky.) 171 S. W. 389.

An implied warranty of title on the sale of chattels is a warranty of the whole title and protects against outstanding liens and encumbrances. *Close* v. *Crossland,* 47 Minn. 500, 50 N. W. 694; *Hodges* v. *Wilkinson,* 111 N. C. 56, 15 S. E. 941, 17 L. R. A. 545; *Western* v. *Short,* 12 B. Mon. (Ky.) 153. In the instant case, although there was a technical breach when the sale was made (*Perkins* v. *Whelan,* 116 Mass. 542; *Mathany* v. *Mason,* 73 Mo. 677; *Chancellor* v. *Wiggins,* 4 B. Mon. (Ky.) 201), yet there was no damage until the plaintiff was deprived of possession. *Barnum* v. *Cochrane,* 143 Cal. 642; *Close* v. *Crossland,* 47 Minn. 500; *Linton* v. *Porter,* 31 Ill. 107. Even when deprived of possession the vendee's recovery is limited to his actual damage. *Close* v. *Crossland,* 47 Minn. 500; *Sargent* v. *Currier,* 49 N. H. 310. In the instant case the plaintiff's only damage was the loss of the services of the mule, and defendants had tendered this amount.

SALE—IMPOSSIBILITY OF PERFORMANCE.—Plaintiff sold to defendant a fireproof safe, upon condition that title should remain in the vendor until payment of the purchase price. Vendee gave vendor his promissory notes as evidence of the debt, and took possession of the safe. Before the notes were paid, the safe was destroyed without the fault of either party. Vendor brought suit on the notes. *Held,* that the loss followed the title, and as title had not passed plaintiff must stand the loss. *Waltz* v. *Silveira,* (Cal. App. 1914) 145 Pac. 169.

This court holds that the loss follows the title, and therefore in conditional sales the vendor must stand the loss. This is in conflict with the weight of authority and what seems to be the more reasonable view. *Burnley* v. *Tufts,* 66 Miss. 49, 14 Am. St. Rep. 540; *Tufts* v. *Griffin,* 107 N. C. 47, 12 S. E. 68; *Chicago Equipment Co.* v. *Merchants' Bank,* 136 U. S. 268, 34 L. ed. 349. See also WILLISTON, SALES, 304. The time for payment often extends over many months, and even years. It must be expected by the parties that the goods will deteriorate during this period, and nevertheless that the buyer will be bound to pay the price. It would seem properly to follow that if the goods are accidentally destroyed or injured, the buyer must stand the loss, that is, he must pay the price in full at the time agreed. Still there are many cases which lay down the rule of the instant case. *Bishop* v. *Minderhout,* 128 Ala. 162, 86 Am. St. Rep. 134; *Whigham, et al.* v. *Hall & Co.,* 8 Ga. App. 509; *McKinney, et al.* v. *Battle Bros.,* 13 Ga. App. 255; *Cobb* v. *Tufts,* 2 Tex. App. 152. Some of the cases which seem to be in accord with this

latter rule and in conflict with the weight of authority, are distinguishable on the ground that something more than the payment of the purchase price on the part of the vendor was necessary to effect a transfer of title. *Swallow* v. *Emery,* 111 Mass. 355; *Arthur* v. *Blackburn,* 63 Fed. 536.

WATERS AND WATER COURSES—RIGHTS OF RIPARIAN OWNERS.—The plaintiffs were the owners of a dairy farm, through which flowed a natural stream of water well suited to the plaintiff's purposes. The defendants were riparian owners and operated a coal mine up the stream. In washing coal much fine material was carried into the creek, rendering the water unfit for domestic purposes and especially for watering stock. The plaintiffs claim damages for the pollution of the water. *Held,* that the plaintiffs were entitled to have the water flow in the stream without material pollution. *Packwood* v. *Mendota Coal & Coke Co.,* (Wash. 1915) 146 Pac. 163.

The court says "that the right to the reasonable use of the water by a riparian owner for manufacturing or industrial purposes, resulting in the pollution of the water with foreign substances, is limited to the extent that such use must not materially pollute the water to the substantial damage of the lower riparian owner." It was pointed out that a reasonable user depends upon the detriment caused to the lower riparian owner and is a question of fact to be determined in each case. *Tenn. Coal, Iron & Ry. Co.* v. *Hamilton,* 100 Ala. 252. The court in the principal case points out that "this might not be the limit of the company's right to the use of the water as a riparian owner, were it putting the water to ordinary and domestic uses," and cited *McEvoy* v. *Taylor,* 56 Wash. 357. Cases adjudicated since *McEvoy* v. *Taylor* draw the same distinction. *Halfrich* v. *Clonville Water Co.,* 74 Md. 269; see 26 L. R. A. N. S. 222 and note. These cases clearly show that what may be a reasonable use for domestic purposes may not be considered a reasonable use for industrial purposes. The principal case follows the weight of authority. *Snow* v. *Parsons,* 28 Vt. 499; *Baltimore* v. *Warren,* 59 Md. 96; *Young* v. *Bankier Distilling Co.,* [1893] A. C. 691; *Merrifield* v. *Lanbard,* 13 Allen 16; GOULD, WATERS, § 220; TIFFANY, REAL PROPERTY, 658. The principal case is distinguished from *Penn. Coal Co.* v. *Sanderson,* 113 Pa. 126, in an interesting manner. In the latter case the stream formed the natural drainage of the basin in which the coal was situated and the stream was polluted by the flow of water by gravity alone, from a coal company's mine.

WILLS—BEQUESTS FOR SPECIAL PURPOSES.—A bequest to a church of $1,000 "to be used for paying the church debt" *held* not adeemed by the church debt having been paid before the death of the testator. *Greeley v. First Universalist Society of Nashua,* (N. H. 1915) 92 Atl. 958.

This is probably the first case where the question of ademption has been raised in which the special purpose was accomplished by another than the testator. A bequest for a special purpose is adeemed by the accomplishment of the purpose, by the testator in his lifetime. *Debeze* v. *Mann,* 2 Bro. C. C. 165, 29 Eng. Rep. 94; *In re Corbett,* [1903] 2 Ch. 326; *Hine* v. *Hine,* 39 Barb. 507; *Tanton* v. *Keller,* 167 Ill. 129, 47 N. E. 376; *Taylor* v. *Tolen,* 38